

O'REILLY LAW GROUP, LLC**E-FILED 12/5/08**

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 STANLEY E. FULTON

UNITED STATES BANKRUPTCY COURT**DISTRICT OF NEVADA**

In Re:)	CASE Nos.:
	)	BK-S-06-10725 LBR
USA COMMERCIAL MORTGAGE	)	BK-S-06-10726-LBR
COMPANY,	)	BK-S-06-10727-LBR
	)	BK-S-06-10728-LBR
Debtor.	)	BK-S-06-10729-LBR
)	
In Re:	)	JOINTLY ADMINISTERED
	)	Chapter 11 Cases
USA CAPITAL REALTY ADVISORS, LLC,)	
	)	Judge Linda B. Riegler
Debtor.)	
	)	LIMITED OPPOSITION TO SECOND
	)	SUPPLEMENTAL FILINGS IN SUPPORT
In Re:	)	OF APPLICATION TO COMPROMISE
	)	AND SETTLE CONTROVERSIES WITH
USA CAPITAL DIVERSIFIED TRUST	)	BEADLE, MCBRIDE, EVANS & REEVES,
DEED FUND, LLC,	)	LLP, ET AL. FILED ON BEHALF OF
	)	GEOFFREY BERMAN AND MICHAEL
Debtor.	)	TUCKER
)	
)	Hearing Date: December 8, 2008
)	Hearing Time: 1:30 p.m.
In Re:)	
)	
USA CAPITAL FIRST TRUST DEED FUND,)	
LLC,)	
)	
Debtor.)	
)	
)	

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In Re:)
)
 USA SECURITIES, LLC,)
)
 Debtor.)

Affects:)
)
☒ All Debtors)
☐ USA Commercial Mortgage Company)
☐ USA Capital Realty Advisors, LLC)
☐ USA Capital Diversified Trust Deed Fund,)
 LLC)
☐ USA Commercial Mortgage Company)
☐ USA Commercial Mortgage Company)

Party-in-Interest Stanley E. Fulton ("Fulton") submits the following Limited Opposition to Geoffrey Berman, Trustee ("Trustee") of the USACM Liquidating Trust (the "USACM Trust") and Michael Tucker, Manager ("Manager") of the USA Capital Diversified Trust Deed Fund, LLC's ("DTDF") Second Supplemental Filing in Support of Application to Compromise and Settle Controversies with Beadle, McBride, Evans & Reeves, LLP, et al. ("BMER") and specifically Paragraphs One and Fourteen of the proposed Findings of Fact and Paragraph One of the Conclusions of Law In Support of Order Approving Settlement with BMER included in the Second Supplement filed with this Court on December 4, 2008 (Doc#66531). Fulton expressly consents to submit this matter on the papers or alternatively consent to a telephonic appearance by all counsel at the hearing currently scheduled for December 8, 2008 at 1:30 p.m. to address these focused issues.

Counsel for USACM Trust and Fulton have previously discussed the proposed Findings of Fact and Conclusions of Law filed with this Court on November 24, 2008. As a result, USACM filed a revised findings of fact and conclusions of law with this Court on December 4, 2008. Fulton's remaining objections to the supplemental filings are set forth below.

Paragraph One of the Proposed Findings of Fact and Paragraph One of the Conclusion of Law state as follows, respectively:

1. Notice of the Motion ("Notice") was properly served on all creditors of the above-titled estates, including to persons and entities who might reasonably be anticipated to have claims for indemnification and/or contribution.

1. Notice has been given to all parties to the above-titled estates, including to persons and entities who might reasonably be anticipated to have claims for indemnification and/or contribution.

Objection: This proposed finding is vague and not consistent with the Court's ruling. The Court did not find that notice was made to all persons who have such claims or who might reasonably be anticipated to have claims for indemnification and/or contribution. In fact, the Court opined, "The cases require me to look and see about whether or not, for example, Beadle is paying more than its aliquot share in the universe. I don't even know what the other claims are out there That is weighing the various levels of contribution. I don't even know who the other people are, and I don't think it's appropriate, and I sincerely doubt that I have the ability to do this by motion practice." See Reporter's Transcript of Proceedings for 11/18/08 at 35, 53.

As a result, these proposed Findings of Fact and Conclusions of Law should be stricken. Any findings or conclusions of law related to Notice should be consistent with Rule 2002 and 9019 and therefore state "Notice of the Motion ("Notice") was properly served on all creditors of the above-titled estates."

Paragraph Fourteen of the Proposed Findings of Fact states as follows:

14. There was no collusion, fraud, or tortious conduct aimed to injure the interests of any non-settling defendants in connection with the negotiation and execution of the Settlement Agreement.

1 Objection: This proposed finding is not consistent with the Court's previous findings nor
 2 consistent with the intent and proposed purpose of such a finding. The purported purpose of it is to
 3 address Plaintiff's conduct during the settlement process. As a result, if such a finding is
 4 necessary, it should be consistent with such spirit and purpose.

5
 6 As a result, the proposed finding should be stricken. If this Court deems such a finding
 7 necessary, then it should be consistent with the spirit and intent for such a finding and state, "There
 8 was no collusion, fraud, or tortious conduct in connection with the negotiation and execution of the
 9 Settlement Agreement."

10 Wherefore, premises considered, Fulton respectfully requests this Court to require USAMC
 11 Trust and DTDF to make the requested changes to the Supplemental Proposed Findings of Fact and
 12 Conclusions of Law.

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 14 DATED: December 5, 2008

O'REILLY LAW GROUP, LLC

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 16 By: /s/ Timothy R. O'Reilly

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PROOF OF SERVICE

I HEREBY CERTIFY, pursuant to LR 5-1, that on this 5th day of December 2008, I served the above and foregoing LIMITED OPPOSITION TO SECOND SUPPLEMENTAL FILINGS IN SUPPORT OF APPLICATION TO COMPROMISE AND SETTLE CONTROVERSIES WITH BEADLE, MCBRIDE, EVANS & REEVES, LLP, ET AL. FILED ON BEHALF OF GEOFFREY BERMAN AND MICHAEL TUCKER in accordance with Fed. R. Civ. P. 5(b)(2)(B) by placing a copy of same in a sealed envelope, with postage fully prepaid thereon, and sending via U.S. mail to the following:

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